

REMARKS

Upon entry of the present amendment, claims 1-8 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendments made herein to the claims do not introduce new matter into the application as originally filed. For example, the amendments to claims 1 and 2 find support in the specification, e.g., at Figures 1 and 2A, as well as at page 4, lines 3-8, page 5, line 23 to page 6, line 12, and page 7, lines 1-11.

Claims 4 and 8 have been amended for grammatical purposes to clarify that the body-surrounding portion referred to is that "of the diaper".

The instant amendments to the claims do not introduce new matter into the application as originally filed, and at the same time serve to put the claims in condition for allowance, and/or at simplify outstanding issues for purposes of appeal to the United States Patent Office Board of Appeals.

Further, based on comments made at page 6, second paragraph, of the outstanding office action, wherein certain of the instant amendments to claims 1 and 2 were suggested by the USPTO, it is submitted that entry of the instant amendment is proper at present.

Provisional Request for Interview

Should the present response not result in an allowance of each of pending claims 1-8, the Examiner is respectfully requested to contact the undersigned (John W. Bailey, Reg. No. 32,881) at 703-205-8031 (Direct Line), in order to arrange a personal interview to help further the prosecution of the instant case towards allowance.

Claim Rejections Under 35 USC § 102(b)

Claims 1, 4, 7 and 8 have been rejected under the provisions of 35 USC § 102(b) as being anticipated by Watanabe et al. (US 5,449,353). Reconsideration and withdraw of the rejection is respectfully requested based on the amendment herein of claim 1.

A review of claim 1 shows that the same positively recites:

... a pair of cuffs or flaps of a breathable liquid-resistant or liquid-impermeable material provided on lateral sides of the absorbent core, with each cuff or flap having one longitudinal end thereof fixed to the liquid-permeable topsheet over the length of the absorbent core and having the other longitudinal end thereof free...

... the body-surrounding elastic members are each secured in their stretched state at the side portions of said body-surrounding portion to thereby manifest contractibility, with the body-surrounding elastic members being both disposed between and joined to an inner sheet and an outer sheet of an exterior member of said diaper, and the body-surrounding elastic members thereby forming gathers at the side portions of said body-surrounding portion; and.... (emphasis added)

Nowhere in the disclosure of the cited Watanabe et al. reference (US '353) is there any teaching or provision for cuffs or flaps as are recited in each of pending claims 1 and 2, nor is there any teaching or provision in Watanabe US '353 for body-surrounding elastic members "both disposed between and joined to an inner sheet and an outer sheet of an exterior member". Absent such teachings in the disclosure of Watanabe et al., it follows that the same cannot anticipate either of instantly amended claims 1 and 2, or any of remaining claims that depend therefrom.

Further, it is noted that the teachings of Watanabe et al. also fail to provide any motivation to arrive at a diaper of the present invention, having body-surrounding members "*both disposed between and joined to an inner sheet and an outer sheet of an exterior member*". Absent such motivation in the cited art, it also follows that the teachings of Watanabe et al. cannot form a proper basis for rejecting claim 1 or any claims that depend therefrom under the provisions of 35 USC 103(a)

Claim Rejections Under 35 USC § 103(a)

Claims 2 and 3 have been rejected under the provisions of 35 USC § 103(a) as being unpatentable over the disclosure of Watanabe et al. (US '353), further in view of Takabayashi et al. (US 5,817,087). Claim 5 has been rejected under the same statute as being unpatentable over Watanabe et al. (US '353) in view of Iskra

(US 5,021,050). Claim 6 has been rejected under the same statute as being unpatentable over Watanabe et al (US '353). Reconsideration and withdrawal of each of these rejections is respectfully requested based upon the amendments made herein, as well as the following comments and considerations.

The Present Invention and Its Advantages

The present invention provides for an advantageous diaper, which possesses unexpectedly good properties relating to fitability and sustained fit, as evidenced by properties such as fit, ease of putting on a wearer and resistance to sagging (see Table 1 at page 13 of the specification).

The advantages possessed by the claimed diapers result in part from Applicants' use of a plurality of body-surrounding elastic members that are disposed at side portions of the diaper, wherein the body-surrounding elastic members are not disposed in at least a center portion of a body-surrounding portion wherein an absorbent core exists, and wherein the body-surrounding elastic members are disposed between an outer sheet which constitutes an outermost surface of the diaper and the anti-leakage sheet of the diaper. In this respect claim 2 clearly recites as follows:

... wherein said body-surrounding elastic members (i) are disposed between an outer sheet which constitutes an outermost surface of said diaper and said anti-leakage sheet, and (ii) form gathers at the side portions of said body-surrounding portion of the diaper; and

wherein said body-surrounding elastic members are cut at their center position in the diaper width position, so that said body-surrounding elastic members are not disposed in at least the center of the portion of the diaper where the absorbent core exists. (emphasis added)

By utilizing such a construction, fitability of the diaper is greatly improved, and at the same time bunching of the absorbent core is avoided, which produces other advantageous effects as discussed in the application.

Distinctions Over the Cited Art

In the cited primary reference of Watanabe et al. (US '353), the Examiner points to elastic members 11b as body surrounding elastic members of the instant invention. However they are not body-surrounding elastic members of the present invention, because they are provided by Watanabe et al. for avoiding leaking from around the leg. In this respect, one can easily see this fact upon examining items 11a and 11b in figure 1 of the cited Watanabe et al. US '353 reference. As shown in the figure 1, the elastic members 11a and 11b cross and overlap each other in a continuous manner. In such a way the continuous elastic members are able to form tight leg opening portions, and are therefore quite distinct and different from the body-surrounding elastic members of the instant invention.

In order to better clarify the fact that the elastic members 11a and 11b of Watanabe et al. US '353 are not positioned in the same manner as the body-surrounding elastic members of the present invention, each of claims 1 and 2 have been amended to recite:

...a body-surrounding portion which is located between a waist opening portion and a leg opening portion of the diaper, *which body-surrounding portion corresponds to a body-surrounding portion of a diaper wearer that exists between the waist and legs of said diaper wearer...*
(emphasis added)

Accordingly, it is impossible for the elastic members 11a and 11b of Watanabe et al. US '353 to correspond to, or encompass the body-surrounding elastic members of the instant invention, and no motivation is provided by Watanabe to arrive at the same. Any contention to the contrary must be reconsidered at present.

The above language was added to each of claims 1 and 2, based on comments made at page 6, second paragraph, of the outstanding office action, wherein the USPTO stated:

...The elastic members 11b of Watanabe are positioned lower on the body than the elastic members disclosed in the instant specification, but the portion of the wearer's body that is surrounded by the elastic members is not disclosed in the instant claims. The elastic members of Watanabe fulfill all of the limitations of the claim.

Further, to the extent that Watanabe might otherwise disclose elastic members (e.g., such as 16a and 16b in figure 5), the

Watanabe disclosure nonetheless completely fails to render obvious any diaper recited in instant claims 1-8, including claim 2 and the claims that depend therefrom. For example, nowhere in the cited Watanabe et al. reference is there provided any teaching relating to a construction as instantly recited in either of claim 1 or claim 2, or the remaining claims that depend therefrom.

The cited secondary references of Takabayashi et al. (US 5,817,087) and Iskra (US 5,021,050), do not cure the above noted deficiencies of the cited Watanabe et al US '353 reference, and as such their combination with the teachings of Watanabe et al. are incapable of rendering the present invention as recited in any of pending claims 1-8 obvious. In this respect no motivation is found in any of the cited art that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Absent such motivation in the cited art the outstanding rejections are not sustainable.

CONCLUSION

Based upon the above considerations, it is submitted that each of the pending claims 1-8 are currently patentable under the provisions of Title 35 of the United States Code.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully

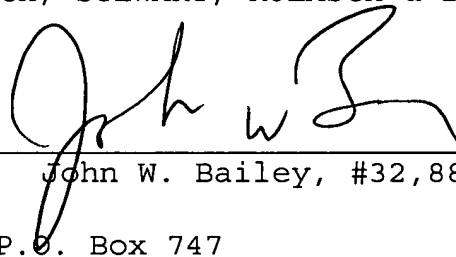
requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By

A handwritten signature in black ink, appearing to read "John W. Bailey", is written over a horizontal line.

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